

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1096 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BAI LABHUBEN BHAVANBHAI MORI

Versus

VADHEL JIVABHAI PACHANBHAI

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Appearance:

MS BANNA S DUTTA for Petitioner  
SERVED for Respondent No. 1  
Mr. S. T. Mehta, Addl. PP for the State.

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/02/97

ORAL JUDGEMENT

This petition under Article 227 of the Constitution is preferred by the wife who has been denied maintenance under section 125 of the Code of Criminal Procedure.

2. The petitioner made an application being Criminal

Case No. 52 of 1985 before the learned Judicial Magistrate, First Class, Vadhwan under section 125 of the Code of Criminal Procedure which was rejected by the learned Magistrate under his judgment and order dated 9th October, 1986. Feeling aggrieved, the petitioner preferred Criminal Revision Application No. 72 of 1986 before the learned Sessions Judge, Surendranagar. The learned Sessions Judge, under his judgment and order dated 5th October, 1987, dismissed the said revision application.

3. It was the claim of the petitioner that her husband was in the habit of gambling and used to demand money from her time and again. He also used to beat and ill treat her. Her life was in danger and she was compelled to live her matrimonial home. She further claimed that respondent No. 1 owned 150 Vighas of agricultural land and other immovable property.

4. Both the Courts below having appreciated the evidence on record, have not believed the claim of the petitioner that she was being beaten and ill treated or that her life was in danger. It is also not believed that respondent No. 1 was in the habit of gambling and used to demand money from her. In view of the above evidence, the claim of the petitioner for maintenance has been rejected.

5. Ms. Datta, learned advocate appearing for the petitioner has failed to refute the above findings of fact recorded by the Courts below. In view of the concurrent findings of fact, this Court in exercise of its power under Article 227 of the Constitution cannot interfere with the same. The petitioner cannot be awarded maintenance in absence of proof of ill treatment and desertion as claimed by her. Petition is, therefore, dismissed. Rule is discharged.

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\*Vyas